



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

CHAMPERTY—ASSIGNMENT OF A CHOSE IN ACTION TO AN ATTORNEY.—In return for services rendered that he was willing to settle for \$5,000 in cash, an attorney took an assignment of a claim for treble damages arising from a violation of the Sherman Anti-Trust Act. At the time of the assignment, he estimated the claim to be worth \$75,000, and if trebled it would consequently net him \$225,000. *Held*, the transaction was champertous and, therefore, an action on the assignment could not be maintained. *Sampliner v. Motion Picture Patents Co.* (D. C., S. D. N. Y. 1917) 243 Fed. 277.

At common law two elements were essential in order to make an agreement champertous: first, an undertaking by one person to defray the expense in whole or in part of another's suit; and, second, an agreement on the part of the latter to partition with the former the proceeds, if any, of the litigation. 4 Bl. Comm. *135; see *Brush v. City of Carbondale* (1907) 229 Ill. 144, 82 N. E. 252. The facts in the principal case, therefore, would not constitute champerty at common law, since there was no agreement to divide the proceeds of the suit. But under modern law, the crime is stripped of its ancient technical strictness, and is now a rule of public policy. 17 Columbia Law Rev. 335. So, the buying of a chose in action by an attorney with intention to sue thereon has been held "champerty in its most odious form". *Slade v. Zeitfuss* (1904) 77 Conn. 457, 59 Atl. 406. But if the assignment be in consideration of an antecedent debt or for services rendered, it is not champerty. *Ware's Adm'r. v. Russell* (1881) 70 Ala. 174; N. Y. Code of Civ. Proc. § 76. In the instant case, the assignment was in consideration of an antecedent debt arising from services rendered. Hence, neither under the common law nor the modern theory was champerty committed. But in view of the fact, that an attorney is an officer of the court, his transactions are scrutinized jealously, *Matter of Holland* (1906) 110 App. Div. 799, 97 N. Y. Supp. 202, and acts which are deemed to be professional misconduct on his part will not be countenanced. *In re A Solicitor* [1912] 1 K. B. 302; *Wernimont v. State ex rel. Little Rock Bar Ass'n.* (1911) 101 Ark. 210, 142 S. W. 194. What is termed champerty is often in reality professional misconduct, and this seems to be the basis of the instant case. It would be hard for the attorney to show that the acceptance of a claim, which, if successfully prosecuted would net over \$200,000 in payment for services valued at \$5,000, was not a gross speculation and an unethical trafficking in the lawsuit of another. If courts would enforce contracts of this nature, legal sanction would be obtained for questionable conduct by attorneys with regard to the claims of others and the door would be open to flagrant contravention of public policy.

CONSENT—CRIMINAL ASSAULT BY HUSBAND ON WIFE—VENEREAL DISEASE.—Defendant was indicted for an assault on his wife in infecting her with syphilis. The judge in charging the jury ruled that the wife never consented to the inoculation of a loathsome disease and that if the defendant infected her knowingly, they should find him guilty. *State v. Lankford* (Del. 1917) 102 Atl. 63.

Consent as a defence to an indictment for assault means an intelligent assent to the act as contemplated and perpetrated by the defendant. Thus consent to medical treatment does not mean consent to defilement, *Reg. v. Case* (1850) 4 Cox C. C. 220, or lewd fondling; *Rex v. Rosinski* (1824) 1 Mood. 19; *Bartell v. State* (1900) 106 Wis. 342, 82 N. W. 142; consent to eat food is not consent to eat poison or

drugs concealed in it; *Commonwealth v. Stratton* (1873) 114 Mass. 303; *State v. Monroe* (1897) 121 N. C. 677, 28 S. E. 547; *contra*, *Reg. v. Hanson* (1849) 2 C. & K. *912; consent to intercourse is not consent to unreasonably brutal treatment accompanying such intercourse; *Richie v. State* (1877) 58 Ind. 355; and finally, in cases like the principal case, consent to intercourse is not consent to intercourse imparting pathogenic germs. *Reg. v. Bennett* (1866) 4 F. & F. 1105; *Reg. v. Sinclair* (1867) 13 Cox C. C. 28; see, *State v. Marcks* (1897) 140 Mo. 656, 677, 41 S. W. 973, 43 S. W. 1095; *contra*, *Reg. v. Clarence* (1888) 22 Q. B. D. 23. In civil cases of this nature, consent is not of governing importance, for as between unmarried persons it is felt to be against good policy to permit a recovery by a plaintiff who exposes herself promiscuously, especially since she must have contemplated such a risk, *Hegarty v. Shine* (1878) L. R. 4 Ir. 288; see dissenting opinion, *Reg. v. Clarence*, *supra*, 54, and as between man and wife, no action is maintainable because of the unity arising out of the marriage relation. *Bandfield v. Bandfield* (1898) 117 Mich. 80, 75 N. W. 287; *Schultz v. Christopher* (1911) 65 Wash. 496, 118 Pac. 629. But in criminal cases there is no objection to an indictment of a husband for an assault on his wife, *State v. Pettie* (1879) 80 N. C. 367, and the wife may testify against him in such a case. *Bramlette v. State* (1886) 21 Tex. Cr. 611, 2 S. W. 765; *Goodwin v. State* (1902) 114 Wis. 318, 90 N. W. 170. Consent then becomes of vital importance. The marital relation contemplates only healthy intercourse, see dissenting opinion, *Reg. v. Clarence*, *supra*, 59, and so the result in the principal case is sound, not because the wife's implied consent was vitiated by the fraud, but because there never was any consent to be contaminated. It has even been said that the state, as a third party interested in all marriages, would object to a deliberate assent to intercourse with a diseased spouse. See, *Trammell v. Vaughan* (1900) 158 Mo. 214, 59 S. W. 79. The principal case seems to be the first of its kind since *Reg. v. Clarence*, *supra*, which is *contra*, but legal scholars have generally sided with the dissenting judges in that case. 2 Bishop, *New Criminal Law* 72 b (2); Beale, *Consent in the Criminal Law*, 8 *Harvard Law Rev.* 319.

CONTRACTS—PUBLIC POLICY—PERSONAL RIGHTS.—In consideration of monthly payments by the defendants, the plaintiff contracted to make no claim to his father's estate, and to leave and stay out of a specified county. Subsequently the plaintiff entered this county, and the defendants discontinued the monthly payments, for which the plaintiff sued, on the theory that the covenant to stay out of the county was counter to policy, and the promise to make no claim to his father's estate was sufficient to bind the defendants. *Held*, for the defendant, on the ground that the contract was inseparable and the promise to stay away was valid and unperformed. *Wallace v. McPherson* (Tenn. 1917) 197 S. W. 565.

A contract stipulating for an extreme and unreasonable abnegation of legal rights will not be recognized. See *Mittenthal v. Mascagni* (1903) 183 Mass. 19, 66 N. E. 425. Therefore, an individual cannot broadly contract away his right to hold property, *Baltimore Humane etc. Society v. Pierce* (1905) 100 Md. 520, 60 Atl. 277, to engage in business, *Ward v. Byrne* (1839) 5 M. & W. 547, to resort to the courts, *Fox v. Masons' etc. Ass'n* (1897) 96 Wis. 390, 71 N. W. 363, to be free from involuntary servitude, *Parsons v. Trask* (1856) 73 Mass. 473,